SUPREME COURT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1188

PETER V. KEILEY,

Petitioner,

vs.

ELBERT HINKSON, ABRAHAM D. BEAME and HARRISON J. GOLDIN,

Respondents.

MEMORANDUM IN OPPOSITON TO PETITION FOR A WRIT OF CERTIORARI

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Petitioner, in attempting to obtain the grant of a Writ of Certiorari raises an issue that was not urged or argued either in the District Court or Court of Appeals. This issue, in fact, though, is non-existent.

Petitioner, relying on Tumey v. Ohio, 273 U.S. 510 (1927), and Ward v. Village of

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Monroeville, 409 U.S. 57 (1972), contends that the New York City Parking Violation Bureau (PVB) is a "profit-making business" having the "statutory duty of raising revenues" (petition, p. 2). Thus, relying on facts not alleged below, petitioner contends that he was denied due process because PVB had a "substantial pecuniary interest" in levying fines. (petition, p. 26).

In both the Tumey and Ward cases, this Court held there was a denial of due process because the mayor of the town was the "judge". In Tumey, the mayor actually received a fee for each individual found guilty of an offense. In Ward, the mayor had the responsibility for producing revenue. Neither situation exists here.

The PVB serves no executive or legislative function within the City government. Its sole function is to adjudicate traffic infractions which constitute a parking violation. New York Vehicle and Traffic Law §236. Therefore, the fact that PVB personnel are paid by the City which receives the fines, does not constitute a denial of due process. Dugan v. Ohio, 277 U.S. 61 (1928).

The procedure followed by the PVB is described in the opinion of the district court herein. See petitioner's Appendix, pp. 4a-9a. To the extent that petitioner, who has elected to default on the summonses he complains of (id. at 3a), may be heard to complain, under Ward and Tumey, of PVB'S hearing procedures, we believe it is enough to note that the PVB hearing examiners have no

BLEED THROUGH

executive responsibilities, and in fact are nothing more than administrative law "judges", no more involved in the City's budgetary processes than the judges of the courts. In the words of Tumey, as quoted in Ward, such a hearing officer's situation is not one "which would offer a possible temptation to the average man as judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused...." 409 U.S. at 60.

Additionally, the increased fine imposed on "scofflaws" does not raise a constitutional question as is seemingly urged by petitioner. Cf. Masden v. Massachusetts, 377 U.S. 407 (1964), reh. den. 379 U.S. 871.

CONCLUSION

THE PETITION SHOULD BE DENIED.

May 5, 1976.

Respectfully submitted,

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